IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 31 of 2007
In
SPECIAL CIVIL APPLICATION No. 24546 of 2006
With
CIVIL APPLICATION No. 890 of 2007
In LETTERS PATENT APPEAL No. 31 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INGERSOLL-RAND (INDIA) LTD, - Appellant(s)
Versus
NARAYAN M. SENDULKAR - Respondent(s)

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Appearance :
NANAVATI ASSOCIATES for Appellant(s) : 1,
MR SHALIN MEHTA with MR PUNIT B JUNEJA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

The judgment delivered in Special Civil Application No. 24546/06 dated 14th December, 2006 has been challenged in this appeal.

2. The learned Single Judge has rejected the petition filed by the appellant-employer challenging validity of order dated 3rd November, 2006 made by the Labour Court, Ahmedabad, below Application Exh. 16 in Reference (LCA)No. 906/2004.

3. The facts giving rise to the litigation, in a nutshell, are as under:

3.1 The appellant-petitioner had employed the respondent as a Helper, who was promoted from time to time and ultimately became Stores In-charge. The respondent had submitted his resignation, which had been accepted by the appellant-petitioner, and according to the case of the appellant-petitioner, service of the respondent workman had come to an end on 28th March, 2004. The respondent had raised an industrial dispute before the Labour Court in relation to the resignation, which was to be decided in the aforesaid Reference. The appellant-petitioner filed an application Exh. 16 requesting the Labour Court to decide the issue whether the respondent was

a “workman” within the meaning of sec. 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') as a preliminary issue. The said application has been rejected and, therefore, the aforesaid petition challenging validity of the order of rejection had been filed, which has also been rejected.

3.2 The learned Single Judge has rejected the petition mainly on the ground that mixed question of fact and law had been raised by virtue of the aforesaid application and it was necessary to lead evidence for deciding the same. The learned Single Judge was also of the view that the matter before the Labour Court was being deliberately delayed at the instance of the appellant-petitioner and, therefore, according to the learned Single Judge, the Labour Court had rightly rejected the Application.

4. We have heard Sr. Advocate Shri K.S. Nanavati appearing for the appellant-employer and learned advocate Shri Shalin Mehta appearing with learned advocate Shri Punit Juneja for the respondent.

5. Sr. Advocate Shri Nanavati has mainly submitted that the respondent-employee had submitted his resignation and his signature on the resignation letter had been attested by two witnesses. It has been submitted that according to the appellant-employer, the respondent is not a “workman” as per the provisions of sec. 2(s) of the Act, and as the

respondent is not a “workman”, the Labour Court ought not to have proceeded further with the matter without deciding the issue whether the respondent is a “workman”. The said issue, being an issue pertaining to the jurisdiction of the Labour Court, as decided by the Hon'ble Supreme Court in the case of **Management of Express Newspapers (Private) Ltd., Madras v. The Workers and others,** AIR 1963 SC 569, should have been decided at the first instance.

6. It has been submitted by him that if it is held that the respondent is not a 'workman', then the entire exercise of deciding the case on merits by the Labour Court would be meaningless. Therefore, he has mainly submitted that the preliminary issue ought to have been decided first. He has, therefore, submitted that the learned Single Judge did not consider the aforestated relevant fact and, therefore, the judgment of the learned Single Judge deserves to be quashed and set aside.

7. He has relied upon the following judgments to substantiate his case:

(1)Gujarat Kamdar Panchayat v. Maize Products & Anr., 2002(1) GLR, 567

(2)Hussan Mithu Mhasvadkar v. Bombay Iron & Steel Labour Board & Anr., (2001) 7 SCC 394.

(3)The Management, Rangaswamy & Co. v. D.V. Jagadish, Major & Anr., 1961 FLR 584

(4)Kanhaiyalal Agrawal & Ors. v. Factory Manager,

Gwalior Super Co. Ltd., 2001(9) SCC 609

(5)Kishorilal v. Sales Officer, District Land Development Bank & Ors., (2006)7 SCC 496

(6)Babu Parasu Kaikadi (dead) by Lrs v. Babu (Dead) through LRs., 2004(1) SCC 681

8. On the other hand, learned advocate Shri Shalin Mehta appearing for the respondent has submitted that there was a conscious effort to delay the proceedings on the part of the appellant employer. It has been submitted by him that a deliberate attempt had been made by the appellant-employer to delay the proceedings before the Labour Court so as to exhaust the poor workman, who was constrained to give resignation under duress. According to him, the respondent, who is having no other source of income is obliged to litigate against an employer, who is making all possible efforts to see that the final outcome is delayed. He has submitted that the alleged resignation had been submitted by the respondent on 28th March, 2004. Had it been a genuine resignation, the respondent would have collected his legal dues and would not have raised an industrial dispute. The industrial dispute raised by him clearly denotes that the so-called resignation was not genuine and was cooked up.

9. Making submissions with regard to delay, it has been submitted by him that the respondent workman had filed a statement of claim on 26th April, 2005 and the written statement was filed by the appellant-employer

on 27th April, 2006 i.e. after one year from the date of filing the statement of claim. So as to delay the proceedings further, an application Exh. 16 was submitted by the appellant-employer on 5th September, 2006. Thus, all possible efforts were made by the appellant-employer to delay the proceedings and its outcome, which was adversely affecting the respondent.

10. He has further submitted that mixed question of fact and law was required to be decided to determine whether the respondent is a “workman.” For the said purpose, evidence was required to be led and that process was likely to take more time and, therefore, the Labour Court has rightly rejected the application Exh. 16 by recording reasons.

11. He has thereafter submitted that looking to the law laid down by the Hon'ble Supreme Court in the case of **D.P. Maheshwari v. Delhi Administration & Ors.,** (1983) 4 SCC 293, if there is a mixed question of fact and law, normally, such a question should not be decided as a preliminary issue as it requires leading of evidence. He has thereafter submitted that the order passed below the Application Exh. 16 is an interim order. Normally, interim orders should not be interfered with by this court in a petition filed under Articles 226 or 227 of the Constitution of India and, therefore, the learned Single Judge has rightly not interfered with the said order by rejecting the petition. He has further submitted

that no prejudice would be caused to the appellant-employer if all the issues are decided by the Labour Court together. For the aforesaid reasons, the learned advocate has submitted that the order passed by the learned Single Judge is just, legal and proper.

12. He has also relied upon the following judgments so as to substantiate his case.

(1)Ramesh B. Desai & Ors. v. Bipin Vadilal Mehta & Ors., 2006(5) SCC 638.
(2)S.V. Verma v. Mahesh Chandra & Anr., 1983(4) SCC 214
(3)National Council for Cement & Building Materials v. State of Haryana & Ors., 1996(3) SCC 206
(4)The Cooper Engineering Ltd. v. Shri P.P. Mundhe, 1975(2) SCC 661
(5)Surya Dev Rai v. Ram Chander Rai & Ors., 2003(6) SCC 675

13. We have heard the learned advocates at length and have also perused the judgments cited by them. We have also gone through the impugned judgment delivered by the learned Single Judge and also the order passed by the Labour Court below the Application Exh. 16.

14. Upon perusal of the record, it is clear that in the instant case, so as to ascertain whether the respondent is a 'workman' within the meaning of sec.

2(s) of the Act, evidence will have to be led. It is also clear that the case before the Labour Court is being unnecessarily dragged. As stated herein above, the proceedings had been initiated in April, 2004, the written statement was filed by the appellant-employer in April, 2005 and the Application Exh. 16 was filed in September, 2006. We are now in 2007. We are sorry to state that still substantial evidence has not been led before the Labour Court so as to decide whether the respondent is a 'workman' within the meaning of sec.2(s) of the Act. There is a finding to the effect that the said question, being a mixed question of fact and law, evidence will have to be led and the said process would take further time.

15. Looking to the delay already caused in the proceedings and considering the peculiar facts and circumstances of this case, we are of the view that this court should not interfere with the concurrent findings arrived at by the Labour Court as well as the learned Single Judge of this court.

16. So far as the judgments, which have been relied upon by Sr. Advocate Shri Nanavati are concerned, the same are not really applicable to the facts of the present case. In the case of **D.P. Maheshwari v. Delhi Administration & Ors.** (supra), the Apex Court has observed as follows:

> ".....There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have

> arrived for a reversal of that policy. We think it better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 f the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decisions on issues more vital to them. Article 226 and Article 136 are not meant to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences.....”

17. In the case of National Council for Cement & Building Material v. State of Haryana and others, (1996)3 SCC 206, the Tribunal had framed a question on the preliminary issue as to whether the activities of the appellant therein constituted an “industry” within the meaning of the Industrial Disputes Act and passed an order that the said issue would be heard as a preliminary issue. Moreover, subsequently by a change of mind, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. Being aggrieved, the appellant approached the High Court which refused to intervene

in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The Apex Court felt that the Tribunal had rightly changed its mind and decided to hear the issue along with other issues on merits at a latger stage of the proceedings and held that the decision of the High Court was fully in consonance with the law laid down by the Apex Court in its various decisions referred to in the body of the judgment **[**Cooper Engineering Ltd. v. P.P. Mundhe, S.K. Verma v. Mahesh Chandra, D.P. Maheshwari v. Delhi Administration, and Workmen v. Hindustan Lever Ltd.**]** and did not interfere with the order passed by the High Court.

18. In the peculiar facts of this case, looking to the fact that almost 3 years have passed after the alleged resignation was submitted by the respondent, in our opinion, the Labour Court should decide the entire Reference at an early date. In the circumstances, in the interest of justice, looking to the facts of the case, we do not think it proper to interfere with the judgment delivered by the learned Single Judge confirming the order passed by the Labour Court on Application Exh. 16. We, therefore, direct the Labour Court to decide all the issues as soon as possible and we also hope that parties to the litigation shall extend their co-operation to the Labour Court so that the matter is finally decided at an early date. We hope that the Labour Court shall

decide the Reference as soon as possible and preferably before 30th September, 2007.

19. For the aforesaid reasons, we dismiss the appeal. There shall be no order as to costs.

As the appeal has been dismissed, the civil application does not survive and the same is disposed of accordingly.

[Anil R. Dave, J.]

[H.N. Devani, J.]

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